

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CYMEYON HILL,

Plaintiff,

v.

KIMBERLY SEIBEL, et al.,

Defendants.

No. 2:21-cv-2382 KJM DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a civil detainee, is proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. In an order filed September 2, 2022, this court found service of the second amended complaint appropriate for defendants Seibel, Weaver, Scotland, and Suzuki. Defendants Scotland and Suzuki filed waivers of service in November 2022. However, CDCR informed the court that it has no records for Seibel or Weaver, as identified by plaintiff.

By an order filed January 23, 2023, this court ordered plaintiff to complete and return to the court, within thirty days, the USM-285 forms, summons, and copies of his second amended complaint which are required to effect service on defendants Seibel and Weaver. On January 30, 2023, plaintiff submitted the USM-285 forms but failed to file the summons and copies of the operative complaint.

In an order filed March 15, 2023, the court provided plaintiff with a copy of the second amended complaint and a summons. Plaintiff was given thirty days to submit the completed summons form and three copies of the second amended complaint required to effect service on

1 defendants Seibel and Weaver. Plaintiff was warned that if he failed to return these documents
2 within the specified time, this court would recommend defendants Seibel and Weaver be
3 dismissed from this action and the case proceed on plaintiff's claims against defendants Scotland
4 and Suzuki.

5 Plaintiff has had months to provide the court with service documents for Seibel and
6 Weaver. He has failed to provide all such documents. Further, this court finds it unlikely that
7 even given additional time, plaintiff could do so. On the USM-285 forms plaintiff provided in
8 January, the addresses are not correct. For both Seibel and Weaver, plaintiff gives a post office
9 box for mail to inmates at California State Prison, Sacramento. Plaintiff lists that post office box
10 as his address as well. Even if the mail reached staff at the prison, CDCR has already indicated
11 that Seibel and Weaver are not employed there. (See ECF No. 15.)

12 Plaintiff was warned that his failure to provide appropriate service documents would
13 result in a recommendation that Seibel and Weaver be dismissed from this case. This court finds
14 that recommendation justified at this point. This case should proceed on plaintiff's Fourteenth
15 Amendment claims against defendants Scotland and Suzuki.

16 Accordingly, IT IS HEREBY RECOMMENDED that

- 17 1. Defendants Seibel and Weaver be dismissed from this action; and
18 2. This case proceed on plaintiff's Fourteenth Amendment claims against defendants
19 Scotland and Suzuki as described in this court's September 2, 2022 order.

20 These findings and recommendations will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
22 being served with these findings and recommendations, either party may file written objections
23 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
24 and Recommendations." The parties are advised that failure to file objections within the specified

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time may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 4, 2023


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:9
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